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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/636,701	08/11/2000	Darek R. Skalecki	08886176US	8113
21028	7590	06/09/2004	EXAMINER	
GOWLING, LAFLEUR & HENDERSON LLP 160 ELGIN STREET SUITE 2600 OTTAWA, ON K1P 1C3 CANADA			NGUYEN, STEVEN H D	
			ART UNIT	PAPER NUMBER
			2665	9

DATE MAILED: 06/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/636,701

Applicant(s)

SKALECKI ET AL.

Examiner

Steven HD Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-3, 5-6, 13-15, 17, 23, 26-27 and 29 are rejected under 35 U.S.C. 102(e) as being anticipated by Saleh (US 2001/0033548).

Regarding claims 1, 13 and 23, Saleh discloses (Figs 1-21 and Pages 1-21) a method and system for receiving a request for selecting an alternate communications path wherein the request containing information regarding the network resources used by said current communications path transmitting data packets (Fig 9, Ref 900 for receiving alarm message and generating a request which includes resources of the current communicating path transmitting data packet, selects an alternate path; the transmitter on the current communicating path is still transmitting the data packet; after receiving alarm message); supplementing the resources available in said network with said network resources used by said current communications path, while computing an alternate communications path (Fig 9, Ref 940 transmits a release message along the failed path for releasing the bandwidth of the failed path to the bandwidth table for using to compute the alternate path ; See Page 11, Sec 133, after releasing the resource of the VP, the node broadcasts a RPR message includes a requested bandwidth to compute the best alternated path between the source and destination, See Fig 15 for selecting a route) .

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Regarding claims 2, 14 and 26, Saleh discloses the network resource includes a bandwidth, memory, CPU and links/nodes (Page 11, Sec 126).

Regarding claims 3, 15 and 27, Saleh discloses alternate communications path uses a bandwidth, CPU and memory which are not greater than the bandwidth, CPU and memory used by said current communications path (Col. 17, Sec 146).

Regarding claim 5, Saleh discloses computing said alternate communications path includes using information from a network topology database (Page 16, Sec 196).

Regarding claim 6, 17 and 29, Saleh inherently discloses a part of alternate path includes a part of the current path because the alternate path only establishes to bypass a failure link or node of the current path.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

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invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 7-10, 12, 18-20, 22 and 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saleh (US 2001/0033548) in view of Bader (USP 6112249).

Regarding claims 7-8, 18 and 24-25, Saleh discloses Figs 1-21 and Pages 1-21) receiving a request for selecting an alternate communications path, said request containing information regarding network resources reservations used by said current communications path transmitting data packets (Fig 9, Ref 900 for receiving alarm message and generating a request which includes resources of the current communicating path transmitting data packet, selects an alternate path; the transmitter on the current communicating path is still transmitting the data packet; after receiving alarm message); removing said network resources reservations used by said current communications path from a network topology database; computing said alternate communications path based on information accessed from said network topology database (Fig 9, Ref 940 transmits a release message along the failed path for releasing the bandwidth of the failed path to the bandwidth table for using to compute the alternate path; See Page 11, Sec 133, after releasing the resource of the VP, the node broadcasts a RPR message includes a requested bandwidth to compute the best alternated path between the source and destination, See Fig 15 for selecting a route based on topology database; See Page 16, Sec 196). However, Saleh fails to disclose restoring said network topology database to reflect again said network resources reservations used by said current communications path. In the same field of endeavor, Bader discloses restoring said network topology database to reflect again said network resources reservations used by said current communications path wherein the steps are performed in

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atomic transaction (Fig 3, Ref 30 and Fig 2, Ref 12 disclose a method and system for rerouting the packets from the secondary path to primary path after the primary path in the topology database becomes active).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to apply a method and system for rerouting the packets from the backup path to main path when it has been restored as disclosed by Bader into Saleh's method and system. The motivation would have been to reduce delay in the network path.

Regarding claims 9 and 19, Saleh discloses the network resource includes a bandwidth, memory, CPU and links/nodes (Page 11, Sec 126).

Regarding claims 10 and 20, Saleh discloses alternate communications path uses a bandwidth, CPU and memory which are not greater than the bandwidth, CPU and memory used by said current communications path (Col. 17, Sec 146).

Regarding claims 12 and 22, Saleh implicitly discloses a part of alternate path includes a part of the current path because the alternate path only establishes to bypass a failure link or node of the current path.

6. Claims 4, 11, 16, 21 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saleh/Bader in view of Fedyk (USP 5848055).

Regarding claims 4, 11, 16, 21 and 28, Saleh fails to disclose the claimed invention. However, Fedyk discloses alternate communications path uses a bandwidth, CPU and memory which are greater than the bandwidth, CPU and memory used by said current communications path (Fig 10, Z bandwidth are greater than X bandwidth).

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Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to apply a method for setup an alternate path having a bandwidth greater than the main bandwidth as disclosed by Fedky into the system of Saleh/Bader. The motivation would have been to reduce the delay in the network path.

Response to Arguments

7. Applicant's arguments filed 4/1/04 have been fully considered but they are not persuasive.

8. In response to page 8, the applicant states that Saleh does not teach computing an alternating communication path while the current communication path transmits data packets in the connection oriented packet switch network. In reply, Saleh discloses a method and system for selecting a alternated path for current path which transmits data packet in connection oriented packet switch network after receiving an alarm message as set forth in section 2 and 5 of the final office action; wherein these steps are performed in an atomic ways such as release bandwidth, computing alternate path and redirect.

9. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., path modification and path optimization) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

10. In response to page 9, Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without

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specifically pointing out how the language of the claims patentably distinguishes them from the references.

11. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

12. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Saleh discloses a method and system for selecting an alternate path for a current path by releasing the bandwidth of the current path and computing an alternate path based on the network topology database as set forth in section 5 of the final office action. Bader discloses a method and system for restoring the bandwidth of the primary path in the database after reactivating the primary path by the node as disclosed in (Fig 2). Since, Saleh suggests a shortest path first technique. Therefore, it would have been obvious to one of ordinary skill in the art to apply a teach of rerouting the data packets at the alternated path to the primary path when the primary path restored as disclosed by Bader's system into Saleh's system. The motivation would have been to reduce delay in the network path.

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13. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., without the trigger of a network failure) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven HD Nguyen whose telephone number is (703) 308-8848. The examiner can normally be reached on 8-5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy D Vu can be reached on (703) 308-6602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to be 'Steven HD Nguyen', with a long horizontal line extending to the right.

Steven HD Nguyen
Primary Examiner
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6/4/04